IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7373 OF 2005

Abdul Majid Hasan Bhatkar
& Ors. .. Petitioners.

vs.

Jahurddin Hasan Bhatkar
& Ors. .. Respondents.

Mr. Venegaonkar i/by G.P. Lasure
for petitioners.
Mr. Arfan Sait for respondents nos. 1 & 2.

CORAM : S.U. KAMDAR, J.
DATE : 1st December, 2005.

P.C.:

1. The impugned order passed on 19.8.2005 by the Joint Civil Judge, Senior Division, Ratnagiri is the subject matter of challenge in the present petition. The only contention raised is that the Executing Court has travelled beyond the decree itself and thus the order is without jurisdiction and illegal. In my opinion, the aforesaid contention has no merits. The decree which has been

passed is to prevent the rain water falling on the boundary of the plaintiff who is the decree holder and for that purpose the Court has directed the judgment debtor to adjust the height of the eaves. Furthermore, in the impugned order the trial Court has come to the conclusion that the decree itself provided that the judgment debtor has to make arrangement so as to see that the rain water does not fall within the premises of the respondent-plaintiff. Two Commissioners were appointed and the Court Commissioner has given a suggestion for removal by removing two eaves. The learned counsel for the petitioner contends that the order of removing the eaves is contrary to the decree because what was provided in the decree was only to adjust the height. In my opinion, the contention is without any merit. The decree is to prevent the fall of rain water in the premises of the plaintiff and how and in what method it should be done is not the subject matter of the decree. Ultimately after the Commissioners having been appointed, the Court has come to the conclusion that the decree can be effectively executed by removal of two rows of eaves as suggested by the Court Commissioner. In that light of the matter, I am not able to accept the contention that the impugned order in execution has travelled beyond the scope of the decree itself. In that view of the matter, the petition fails and is accordingly dismissed. No

order as to costs.